

The Legal Practice of the “Principle of Integrity” of Ta-Li-Yuan

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Abstract

This Article intends to focus on the discussion of twelve sets of Ta-Li-Yuan's precedents and rulings regarding the “Principle of Integrity” during the years of 1912 to 1928. This Article also divides them into five groups subordinated to the “Principle of Integrity”, including “Execution of Rights and Warranty”, “Principle of Fundamental Changes”, “Prohibition of Abuse of Rights”, “Prohibit of Extortionate Profits” and “Proportionately Reduction of Default Payment”, with purposes to examine how the Judges of Ta-Li-Yuan investigated the facts and interpreted the laws: The relevant analysis and comments will be presented and this Article further explores how the process of the modern Chinese legal evolution is affected by the closely intertwined relationship between the “legal technology” of the Judges and the “ethics” of the society.

It appears that this Article analyzes the application of the “Principle of Integrity” embedded in the modern western legal concepts based on the said twelve sets of Ta-Li-Yuan's precedents and rulings. However, in reality, this Article further examines the historical process of the adoption of the Civil Code of Germany, Switzerland and Japan in the legal systems during the period of the late Qing Dynasty and the early Republic of China, with the purposes to explore “the tradition versus the modern times” and “the permanence and the changes” existed in the “legal evolution” of the Civil Code during the said period. The materials referred to in this Article are the juridical cases compiled in the original Ta-Li-Yuan files which are seldom used by the academics. Based on the

relevant legal concepts of the modern Civil Code, we will, on the one hand, trace back the evolution of the “Principle of Integrity” existed in the European legal regimes, and, on the other hand, track the possible expressions of the “Principle of Integrity” executed in the traditional Chinese laws. In the end, we will introduce the similarity and the differences regarding the pursuit of the “social justice” between the “thoughts of the mercy” executed in the traditional Chinese laws and the “legal principles” adopted by the juridical cases of the early Republic of China.

Keywords: Ta-Li-Yuan, Principle of Integrity, Legal Principles, the Drafting of the Qing Civil Code, Abuse of Rights, Principle of fundamental change